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Remarks

Reconsideration is requested. Claims 28-33 are presented in unamended form (except to correct minor typographical errors in claims 32, 33) in view of the Office Action having been made final.

Claim 28 was rejected under 35 U.S.C. 103 as being unpatentable over Kowaguchi (U.S. Patent No. 6,201,973) in view of Tomoike (U.S. Patent No. 6,233,447) and in further view of Murayama (U.S. Patent No. 6,643,514). Although certain of applicants' arguments presented in applicants' prior response were addressed in paragraph 2 of the Office Action, the grounds for the rejection of the claims set forth in paragraph 3 of the Office Action remained unchanged from the prior Office Action. It is respectfully submitted that claim 28 is not rendered obvious in view of these references for the reasons explained below.

In claim 28 location information for one or more designated geographical areas is stored in a mobile communication device. That is, the "mobile communication device", e.g. a cellular telephone, is an end user mobile communication instrument and not infrastructure supporting equipment such as a mobile telephone exchange (MTS). This meaning is clear from the supporting specification and the claim itself wherein the mobile communication device is defined as receiving a first signal from its supporting exchange, e.g. MTS. Thus, steps relating to the mobile communication device are limited to steps relating to an end user communication instrument. As properly construed, claim 28 is not rendered obvious in view of the stated grounds.

Activation of an audible incoming call indicator at the mobile communication device is prevented while it is within one of the one or more designated geographical areas. This step includes receiving a first signal at the mobile communication device from its supporting exchange wherein the signal represents that the one of the one or more designated geographical areas comprises one or more high traffic areas. Activation of the audible incoming call indicator is prevented in the mobile communication device in response to receipt of the first signal.

It was acknowledged in the stated grounds for rejecting claim 28 on page 5 of final Office Action that Kowaguchi in view of Tomoike does not teach the steps of claim 28 of "receiving at the mobile communication device a first signal from a supporting exchange representing that the one of the one or more designated geographical areas comprises one or more high traffic areas; and preventing activation of the audible incoming call indicator in the mobile communication device in response to receipt of the first signal." Thus, the final Office Action continues to rely on Murayama as teaching these limitations, and the alleged teaching of Murayama is then combined with other two references to satisfy all the limitations of claim 28.

Murayama is directed to distributing call requests among a plurality of processors at a "radio exchanging station", i.e. in infrastructure equipment. Upon reviewing the entirety of Murayama it will be clear to one of ordinary skill in the art that the "radio exchanging station" consists of what is commonly termed in the wireless/cellular industry as a mobile switching center that includes one or more telecommunication switches coupled to one or more wireless base stations. The selection processor 10 and the execution processors may reside in one switch or be distributed among more than one switch. The radio resources are stand-alone wireless base stations. Thus, **the entirety of the radio exchanging station 1 is directed to fixed infrastructure telecommunication equipment.**

As stated in the Office Action:

"Murayama teaches of receiving at the mobile communication device a first signal from a supporting exchange representing that the one of the one or more designated geographical areas comprises one or more high traffic areas (column 4, lines 47-54 and columns 5 and 6, lines 66-67 and 1-15, respectively; wherein the 'call processing execution processor' sends the disconnect signal that is an indication of a designated high traffic area)."

Applicant respectfully disagrees with the above interpretation and conclusions regarding the teachings of Murayama. In Murayama at column 4, lines 47-54, reference is made to FIG. 3 which is a flowchart showing signaling between the selection processor 10 and call processing processors. It is clear based on this text and FIG. 3 that these communications are from the

execution processor to the selection processor, both of which are part of the wireless infrastructure equipment and not part of a mobile communication device as recited in claim 28.

It should also be noted that the communication of a disabled condition to the execution processor from one of the selection processors does not inherently imply that a high traffic condition exists for the subject execution processor. For example, the corresponding radio resource (base station) may simply have been taken out of service for normal maintenance or a communication problem may exist between the radio resource and the corresponding execution processor. None of these conditions which would give rise to a disabled condition being reported by the execution processor and transmitted to the selection processor would mean that high traffic congestion or a high traffic area was present. Hence, the infrastructure internal signaling is not inherently representative of high traffic congestion.

Further, it is well known to those skilled in the art that substantial difficulties exist when attempting to adapt a function carried out by infrastructure equipment to that function being carried out by a mobile device. For example, it is known that infrastructure equipment has access to signals and information that are either not available to the mobile device, or are made available only at a later time making use of such signals and information difficult, if not impossible. Also, a mobile communication device has limited processing power relative to the infrastructure equipment which makes processing control signals and information substantially more difficult by a mobile communication device. Additionally, many of the functions carried out at the infrastructure equipment are not easily replicated at the mobile communication device. Therefore, one of ordinary skill in the art would not be led to consider implementation of a function carried out by infrastructure equipment at a mobile communication device in view of the substantial and significant differences in the environments.

In Murayama at column 5, lines 66 through column 6, line 15, the text discusses part of the process shown in FIG. 6 between the execution processors and the selection processor (all of which are part of the infrastructure equipment). It explains that a call request is held if not denied at the infrastructure equipment if an execution processor is not available to handle it. This does not supply the required teaching of claim 28 regarding receiving a first signal at the

mobile communication device from its supporting exchange wherein the signal represents that the one of the one or more designated geographical areas comprises one or more high traffic areas.

In the final Office Action it was stated that the execution processor of Murayama "sends the disconnect signal that is an indication on a designated high traffic area." Nowhere in the cited text is there a teaching of sending a "disconnect signal", i.e. a signal causing an established communication channel to be terminated. As described in the text and shown in FIG. 6, a "no distribution" determination in step 58 is made if no execution processors are available to handle the requested new call. Each execution processor, as polled by the selection processor, returns an indication of whether it can accommodate a new call. Even if an execution processor returns a NO indication, this is not an equivalent of a disconnect signal. It is merely an indication that this particular execution processor cannot at the current time accommodate handling a new call. It is the selection processor that must make a determination if none of the execution processors have the capability to handle the new call request.

On page 3 of the final Office Action, figure 1 of Tomoike was referenced as disclosing call control sections 2 and 3 including traffic monitoring section and a call termination judging section. It was suggested that a known protocol requires a message to be sent when a disconnection is about to take place. It should be first noted that claim 28 does not recite a requirement of a "disconnect signal". The "first signal" of claim 28 is received at the mobile communication device and represents that a designated geographical area comprises a high traffic area, not a disconnect command. Assuming arguendo that a disconnect signal is known to be sent to a mobile to cause an established communication channel to be released, the sending of such a disconnect signal is not equivalent or analogous to the requirement of the "first signal" as defined in claim 28. Hence, the requirement of a first signal as defined in claim 28 is not rendered obvious even in view of a disconnect signal.

With regard to the teachings of Tomoike, its signal flow diagram in FIG. 2 indicates that the mobile station 4 does not receive ANY disclosed signal from the mobile communication exchange 3, and hence it cannot supply a teaching of a "first signal" as required in claim 28.

Since Kowaguchi was not relied upon in the final Office Action with regard to providing a teaching of a "first signal", it need not be discussed. Therefore, is believed to be clear that none of the three applied references supply the required teachings in accordance with claim 28, especially with regard to the requirements of the first signal. This requirement is simply not taught or fairly suggested by the references. Withdrawal of the rejection of claim 28 under 35 U.S.C. 103 is believed to be proper.

Claim 29 was rejected under 35 U.S.C. 103 based on the same three references with reliance again being placed on Murayama to supply the further limitation recited in claim 29. That is, the limitation that must be found in Murayama is the transmission to a mobile communication device of location information for the one or more first high traffic areas wherein the use of audible incoming call indicators is restricted. Murayama provides no teaching, and hence not the required teaching, of the transmission of control signals to a mobile communication device. Murayama is only concerned with communications among infrastructure equipment as explained above. Further, there is no indication in Murayama even with regard to the communication among infrastructure equipment that information is provided that designates specific areas as being high traffic areas. Thus, claim 29 is not rendered obvious based on the combination of the applied references.

Claim 30 was also rejected under 35 U.S.C. 103 based on the same three references, and again Murayama was relied upon as applying the "receiving of a first signal" limitation as discussed above with regard to claim 28. For the reasons explained above, Murayama does not supply the required teaching, and hence the rejection of claim 29 based on the applied three references should be withdrawn.

Claim 31 is believed to be allowable for reasons similar to that explained above with regard to claim 29.

Claims 32 and 33 were rejected under 35 U.S.C. 103 based on the same three applied references. Claim 32 defines the step of receiving at the mobile communication device a first signal as comprising receiving the first signal via a wireless transmission from the supporting

exchange. Tomoike, at column 4, lines 58-67 and FIG. 2, was alleged to teach this additional requirement. It will be noted that the signal flow diagram of FIG. 2 of this reference clearly illustrates that mobile station 4 receives no command signals from the mobile communication exchange 3 in accordance with the teachings of the reference. Therefore, this reference does not teach or suggest the transmission of a control signal to the mobile station for any purpose, and certainly not a first signal is defined in accordance with claim 32. As discussed above, a "disconnect signal" that may be transmitted from the exchange to the mobile station that represents an existing communication channel should be released is not equivalent to or suggestive of the required first signal in accordance with claim 32. Therefore, claim 32 is not rendered obvious based on the applied grounds.

Claim 33 is not rendered obvious for similar reasons discussed above with regard claim 32.

One of ordinary skill in the art would not arrive at the invention according to claims 28 and/or 30 since such a person would find the disclosure of Tomoike to teach away from making the combination suggested in the Office Action. It is well-settled that teachings of a reference that teach away from a limitation of the claimed invention must be considered as well as teachings of the reference that could point towards the invention.

...an applicant may rebut a prima facie case of obviousness by showing that the prior art teaches away from the claimed invention in any material respect. *In re Geisler*, 116 F.3d at 1469, 43 USPQ2d at 1365 (quoting *In re Malagari*, 499 F.2d at 1303, 182 USPQ at 553). *In re Peterson*, 315 F.3d 1325, 65 USPQ2d 1379 (CA FC 2003)

A general objective of Tomoike is to not place a heavier load, i.e. require additional processing and actions, on an already congested exchange. This material teaching would lead one of ordinary skill in the art to not have a congested exchange, i.e. the exchange supporting communications with the subject mobile device, attempt to send any information to the mobile, especially about an attempted call that is intentionally not set up since such a communication would inherently increase the load on the already congested exchange. Thus, one of ordinary skill in the art if faced with combining the teachings of Tomoike with the other two references would likely implement the interruption of an attempted call path routing solely by the

infrastructure as described in Tomoike. Based on the teachings of Tomoike to avoid further loading of a congested exchange, one of ordinary skill the art would not have such a congested exchange attempt to communicate a signal to a supported mobile device, and hence the inventions according to claims 28 and 30 are not rendered obvious even in view of the combination of these three references.

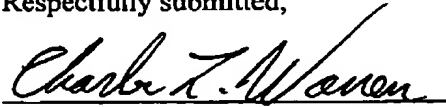
In the final Office Action on page 3 with regard to the argument provided in the above paragraph, it was stated that: "the examiner is providing the broadest interpretation of claim [28], and Tomoike meets the requirement" with reference being made to its abstract. The Examiner's reliance on the principle of "broadest reasonable interpretation" is believed to be misapplied. This principle is recognized with regard to interpreting claim language. However, it is inapplicable with regard to an expansive reading of the specific teachings of a relied upon prior art reference. That is, it is the expressed teachings of the prior art document that must be compared to the present invention as defined by a subject claim. More specifically, it is not permissible to only selectively pick certain words from a prior art reference while ignoring the broad objectives and other teachings of the prior art reference, **especially where such other teachings are contrary to or teach away from the requirements of the claimed invention.** The case law (see above) requires the entire teachings of an applied prior art reference, including those portions which teach away from a claim limitation, be considered in determining whether the reference as a whole supplies a teaching one of ordinary skill in the art that would render the subject limitation of the claim obvious. As explained above, one of ordinary skill in the art would be led away from the subject limitation based on the teachings of Tomoike.

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If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call applicants' attorney at 630-584-9206.

Respectfully submitted,



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